

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Renee Symanietz,

Complainant,  
vs.

ORDER OF DISMISSAL

Richard Carlbom,

Respondent.

On October 31, 2006, Renee Symanietz filed a Complaint with the Office of Administrative Hearings alleging a violation of Minn. Stat. § 211B.02 by Richard Carlbom. Mr. Carlbom is the mayor of St. Joseph, Minnesota. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 31, 2006, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by FAX and by United States mail to the Respondent on October 31, 2006.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a prima facie violation of Minn. Stat. § 211B.02.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

**IT IS ORDERED:**

That the Complaint filed by Renee Symanietz against Richard Carlbom is DISMISSED.

Dated: November 1, 2006

/s/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

**NOTICE**

Under Minn. Stat. § 211B.36, subd. 5 this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

## MEMORANDUM

Richard Carlbom is the current mayor of the City of St. Joseph, Minnesota. In St. Joseph, election to the office of mayor is on a non-partisan basis. On October 19, 2006, the student weekly newspaper of the College of St. Benedict's and St. John's University, *The Record*, published an advertisement that stated as follows:

### TONIGHT

College Democrats is hosting a "Meet the Candidates Night" at 6:30 p.m. in the TRC Boardroom at St. Ben's. Democratic Candidates from local and state races will discuss their platforms and take questions from students.  
Candidate for Secretary of State: Mark Ritchie  
Commissioner: Mark Sakry  
State Representative Larry Hosch  
St. Joseph Mayor: Richard Carlbom<sup>[1]</sup>

Mr. Carlbom attended the "Meet the Candidates" forum put on by the College Democrats and spoke to the audience, encouraging them to vote for him. Mr. Carlbom also distributed flyers at the forum that state: "Re-Elect Richard Carlbom Mayor – St. Joseph."<sup>[2]</sup>

The Complaint alleges that by attending the College Democrats "Meet the Candidates" forum and by handing out campaign flyers at the forum, Mr. Carlbom falsely implied that he has the support or endorsement of the Democratic Party in violation of Minn. Stat. § 211B.02. According to the Complaint, Mr. Carlbom has represented himself to be a "Democratic Candidate for the nonpartisan position of St. Joseph Mayor."

Minn. Stat. § 211B.02 provides as follows:

#### **211B.02 False Claim of Support.**

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

The statute prohibits a candidate from falsely stating or implying that he has the endorsement or support of a major political party. However, nothing in section 211B.02 prohibits a candidate from informing voters of his party affiliation.<sup>[3]</sup> Here, the Complaint fails to allege any facts to support finding that Mr. Carlbom falsely stated or implied he has the support or endorsement of the Democratic Party. The Complaint alleges only that Mr. Carlbom attended a candidates' forum sponsored by the College Democrats at which he spoke and handed out campaign flyers. Neither of these actions implies that Mr. Carlbom

has the support or endorsement of the Democratic Party. Moreover, there is no allegation that Mr. Carlbom prepared the advertisement that appeared in *The Record*, and there is no allegation that Mr. Carlbom's campaign flyer states or implies endorsement or support by the Democratic Party.<sup>[4]</sup>

The Complaint is dismissed because it fails to allege a prima facie violation of Minn. Stat. § 211A.02.

**B.J.H.**

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<sup>[1]</sup> Complaint, Attachment 1.

<sup>[2]</sup> Complaint, Attachment 2.

<sup>[3]</sup> *Schmitt v. McLaughlin*, 275 N.W.2d 587 (Minn. 1979).

<sup>[4]</sup> In *Schmitt v. McLaughlin*, cited by the Complainant, the Minnesota Supreme Court held that a candidate's use of the initials "DFL" falsely implied that the candidate had the endorsement of the DFL party in violation of Minnesota election law. There is no comparable allegation in this case.